IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8579 of 1999

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARAKRAMSINHJI NATVARSINHJI PUVAR - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner(s) : 1,
MS MINI NAIR, AGP for Respondent(s) : 1 – 2, 4 - 5.
MR TRILOK PATEL for MR BJ JADEJA for Respondent(s) : 3,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 27/06/2007 & 28/06/2007

ORAL JUDGMENT

This petition preferred under Articles 226 and 227 of the Constitution of India to challenge the judgment and order dated 7th July, 1999 passed by the

Gujarat Revenue Tribunal in Revision Application No.TEN.B.A. 427/93 arises from the proceedings under Section 8 of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as, **"the Act"**).

The Act has been enacted to fix a ceiling on holding agricultural land and to provide for the acquisition and disposal of the surplus agricultural land with a view to securing the distribution of agricultural land as best to subserve the common good. Section 5 of the Act determines the ceiling area in different local areas as specified in Schedule I of the Act. Chapter III of the Act comprising Sections 6 to 26 provides for fixation of ceiling on holding land, determination of surplus land and acquisition thereof. The ceiling areas specified in Schedule I of the Act came to be modified with effect from 1st April, 1976 by the Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 (Gujarat Act No.2 of 1974) (hereinafter referred to as, **"the Act of 1972"**). Sub-section (1) of Section 8 of the Act provides, inter alia, that where after 24th day of January, 1971, but before the specified

date (i.e. 1st April, 1976), any person has transferred whether by sale, gift, mortgage, with possession, exchange lease, surrender or otherwise or partitioned any land held by him, such transfer or partition shall, unless it is proved to the contrary, be deemed to have been made in anticipation in order to defeat the object of the Act. Sub-section (2) thereof provides for an application to be made to the Collector for declaration that a transfer or partition was not made in anticipation in order to defeat the object of the Act. Sub-section (3) thereof enjoins the Collector to hold an inquiry and after giving an opportunity to the transferor and the transferee to be heard to decide whether or not such transfer or partition of land was made in anticipation in order to defeat the object of the Act.

The petitioner owned certain lands admeasuring 72 Acres at village Kathwada, District Sabarkantha. Out of the said lands, by an agreement dated 1st July, 1970, he agreed to sell land Survey No.263 admeasuring 32 Acres to one Shri Jivatsinhji, the

father of the respondent no.3. In pursuance of part payment of sale price, the petitioner handed over the possession of the land to the said Shri Jivatsinhji. On receipt of the entire consideration, by a registered sale deed executed on 5th May, 1972, the petitioner sold the said land to the said Shri Jivatsinhji. On introduction of the Act of 1972 with effect from 1st April, 1976, the petitioner made application to the Deputy Collector under Section 8(2) of the Act to declare that the sale in question was bonafide and was not made in order to defeat the provisions of the Act. After a round of litigation the said application came to be rejected by the Deputy Collector, Sabarkantha by his order dated 25th September, 1981. It was the case of the petitioner that at the relevant time he was a minor; he sold the land through a guardian to generate money to meet the expenses for a Tractor, bullocks and other agricultural equipments. He also produced a bill/cash memo for the purchase of Tractor. The Deputy Collector was, however, of the opinion that as the sale was made between two terminal dates i.e. 24th January, 1971 and 1st April, 1976, the same was not

bonafide and was made with a view to defeating the provisions of the Act. He accordingly rejected the application made by the petitioner. Feeling aggrieved, the petitioner preferred Revision Application No.427/1993 before the Gujarat Revenue Tribunal. The order of the Deputy Collector came to be confirmed by the Tribunal by the impugned judgment and order dated 7th July, 1999. Therefore, the present petition.

28-06-2007

Mr.Patel has submitted that in the present case the petitioner had executed the agreement for sale on 1st July, 1970 i.e. prior to 24th January, 1971 and had also handed over possession thereof on the same date. The agreement for sale also amounts to a transfer within the meaning of Transfer of Property Act. Therefore, the petitioner cannot be said to have transferred the land after 24th January, 1971 and before the specified date as has been held by the Tribunal below. The provisions of Section 8 of the Act, therefore, cannot be invoked. Further, the

petitioner did produce the materials to support his case that he did require the money for purchase of a Tractor, bullocks and other agricultural equipments. The petitioner had thus satisfied the authority below that the disputed sale of the land was not made with a view to defeating the object of the Act.

In support of his contentions, he has relied upon the judgments of this Court in the matters of **Patel Kantibhai Zaverbhai and others v/s. The State of Gujarat** (Special Civil Application No.3445/1980, decided on 14th June, 1991; Coram: S.D.Shah, J.); of **Shri Roshir Mancherghe Devierwale v/s. The Deputy Collector, Bulsar** (Special Civil Application No.2436/1978, decided on 7th August, 1984; Coram: S.A.Shah, J.); of **Lajjashanker Keshavji Joshi v/s. State of Gujarat** [1985(2) GLR 658] and of **B.N.Kanchan v/s. Deputy Collector, Rajkot** [1994(1) GLH 28]. He has also relied upon the judgment of the Hon'ble Supreme Court in the matter of **Brijendra Singh v/s. State of U.P. And others** [AIR 1981 SC 636].

Ms.Nair has contested this petition. She has

submitted that this is a petition under Article 227 of the Constitution of India. This Court, in exercise of supervisory jurisdiction conferred by Article 227 of the Constitution of India, shall not interfere with the concurrent finding of facts recorded by the Tribunal and the authority below. She has submitted that both the Tribunal and the authority below have recorded concurrent finding that the sale in question was made in order to defeat the provisions of the Act.

This Court in the matter of Patel Kantibhai Zaverbhai and others (supra) had occasion to consider various provisions of the Act and their scope and ambit. The learned Judge has observed that, "**...the Gujarat Agricultural Land Ceiling (Amendment) Bill was introduced in the Legislative Assembly in December, 1972. Therefore, any transaction effected prior thereto cannot be said to have been effected with intention or in anticipation of any amendment.**" In the matter of Lajjashanker Keshavji Joshi (supra), this Court has held that, **"This also indicates that the Legislature has used the phrases "lease or**

otherwise" and "partition or otherwise" even after mentioning all modes of transfer contemplated under the Transfer of Property Act and, therefore, this indicates that the Legislature wanted to cover all sorts of transfer of the land by which the possession of the land is transferred in favour of other persons...So the Legislature all throughout provides that if the possession of the land is transferred, then it would be a transfer."

In above view of the matter, it is apparent that it is not the sale alone or the date of the sale which is relevant for the purpose of Section 8 of the Act but the date of the agreement for sale and handing over of the possession shall also be equally relevant. In the present case, indisputably, on 1st July, 1970 the petitioner not only entered into agreement for sale but also transferred the possession of the land to the respondent no.3. Thus, the petitioner cannot be said to have transferred the land after 24th January, 1971 and before the specified date (i.e. 1st April, 1976). The Tribunal and the authority below have manifestly erred in ignoring

these relevant facts and taking into consideration the actual date of the sale alone. Besides, the approach of the Tribunal below is totally perverse in holding the second statement given by the petitioner in the year 1981 against him. It appears that the petitioner had once given a statement before the authority below on 26th June, 1978. When called upon in the year 1981 to give another statement, he simply supported his first statement without further comment upon it. This would only mean that whatever statement he had made on 26th June, 1978 was all that he had to say in the subject matter. This cannot be construed to mean that the petitioner had no defense at all.

There is one more reason why the impugned order cannot be sustained. Section 8(3) of the Act enjoins the Collector to decide the application made under sub-section (2) after hearing the transferor and the transferee. In the present case, the transferee, the respondent no.3 had not been issued notice nor was he given opportunity of hearing before the impugned order was made. The impugned order was thus made by the authority below without complying with the

statutory requirement which shall make the order null and void.

In above view of the matter, the petition succeeds. The impugned judgment and order dated 7th July, 1999 passed by the Gujarat Revenue Tribunal in Revision Application No. TEN. B.A. 427/93 is quashed and set-aside. The petitioner's application made under Section 8(2) of the Act shall stand granted. Rule is made absolute with cost.

(Ms. R.M.Doshit, J.)

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